law of treasure trove, which is defined as any gold or silver, in coin or bullion, found concealed in the earth or in a house or other private place, but not lying on the ground, the owner of the treasure being unknown. The rule as to such property in this country, in the absence of legislation, is that the title belongs to the finder as against all the world except the true owner, the principle being the same as to lost property. Weeks *v.* Hackett, 104 Me. 264, 71 Atl. 858, 19 L. R. A. (N. S.) 1201, 129 Am. St. Rep. 390, 15 Ann. Cas. 1156; Danielson *v.* Roberts, 44 Or. 108, 74 Pac. 913, 65 L. R. A. 526, 102 Am. St. Rep. 627. The owner of the soil in which treasure trove is found acquires no title thereto by virtue of his ownership of the soil. Weeks *v.* Hackett, supra; note, 15 Ann. Cas. 1156; 19 L. R. A. (N. S.) 1201; 17 R. C. L. 1200; Bowen *v.* Sullivan, 62 Ind. 281, 30 Am. Rep. 172; Williams *v.* State, 165. Ind. 475, 75 N. E. 875, 2 L. R. A. (N. S.) 248."

Tax on Income of Person Employing Child Labor Unconstitutional. —In Bailey *v.* Drexel Furniture Co., 42 Sup. Ct. 449, it was held that, The Child Labor Tax Law (Act Feb. 24, 1919, tit. 12, § 1200 et seq. [Comp. St. Ann. Supp. 1919, §§ 6336 7/8a to 6336 7/8h]), imposing a tax of 10 per cent. of the net income on a person employing child labor, which was designed to regulate child labor and not to collect revenue, as is manifest from its provisions, cannot be sustained as a valid exercise of the taxing power under Const. art. 1, § 8, merely because what was in substance a penalty for violatior of the regulations was designated as a tax, even though the court will sustain as a taxing measure an act which imposes a tax so exclusive as to prevent the act taxed.

Mr. Chief Justice Taft who delivered the opinion of the court said in part:

"Out of a proper respect for the acts of a co-ordinate branch of the government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting, from the weight of the tax, it was intended to destroy its subject. But in the act before us the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States.

"The difference between a tax and a penalty is sometimes difficult to define, and yet the consequences of the distinction in the required method of their collection often are important. Where the sovereign enacting the law has power to impose both tax and penalty, the differ-

ence between revenue production and mere regulation may be immaterial, but not so when one sovereign can impose a tax only, and the power of regulation rests in another. Taxes are occasionally imposed in the discretion of the Legislature on proper subjects with the primary motive of obtaining revenue from them and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment. Such is the case in the law before us. Although Congress does not invalidate the contract of employment or expressly declare that the employment within the mentioned ages is illegal, it does exhibit its intent practically to achieve the latter result by adopting the criteria of wrongdoing and imposing its principal consequence on those who transgress its standard.

"The case before us cannot be distinguished from that of Hammer *v.* Dagenhart, 247 U. S. 251, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. A. 649, Ann. Cas. 1918E, 724. Congress there enacted a law to prohibit transportation in interstate commerce of goods made at a factory in which there was employment of children within the same ages and for the same number of hours a day and days in a week as are penalized by the act in this case. This court held the law in that case to be void. It said:

" 'In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the states, a purely state authority.'

"In the case at the bar, Congress in the name of a tax which on the face of the act is a penalty seeks to do the same thing, and the effort must be equally futile.

"The analogy of the Dagenhart Case is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax, and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state in order to coerce them into compliance with Congress' regulation of state concerns, the court said that was not in fact regulation of interstate commerce, but rather that of state concerns and was invalid. So here the so-called tax is a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the state government under the federal Constitution. This case requires as did the Dagenhart Case the application of the principle announced by Chief Justice Marshall in McCulloch *v.* Maryland, 4 Wheat. 316, 423 (4 L. Ed. 579), in a much-quoted passage:

'Should Congress, in the execution of its powers, adopt measures

which are prohibited by the Constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land.'

"But it is pressed upon us that this court has gone so far in sustaining taxing measures the effect and tendency of which was to accomplish purposes not directly within congressional power that we are bound by authority to maintain this law.

"The first of these is Veazie Bank *v.* Fenno, 8 Wall. 533, 19 L. Ed. 482. In that case, the validity of a law which increased a tax on the circulating notes of persons and state banks from one per centum to 10 per centum was in question. The main question was whether this was a direct tax to be apportioned among the several states 'according to their respective numbers.' This was answered in the negative. The second objection was stated by the court:

'It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is, therefore, beyond the constitutional power of Congress.'

To this the court answered:

'The first answer to this is that the judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the Legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution.'

"It will be observed that the sole objection to the tax here was its excessive character. Nothing else appeared on the face of the act. It was an increase of a tax admittedly legal to a higher rate and that was all. There were no elaborate specifications on the face of the act, as here, indicating the purpose to regulate matters of state concern and jurisdiction through an exaction so applied as to give it the quailties of a penalty for violation of law rather than a tax.

"It should be noted, too, that the court, speaking of the extent of the taxing power, used these cautionary words (8 Wall. 541, 19 L. Ed. 482):

'There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the states, or if exercised for ends inconsistent with the limited grants of power in the constitution.'

"But more than this, what was charged to be the object of the excessive tax was within the congressional authority, as appears from the second answer which the court gave to the objection. After having pointed out the legitimate means taken by Congress to secure a na-

tional medium or currency, the court said (8 Wall. 549, 19 L. Ed. 482):

'Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the county must be futile.'

"The next case is that of McCray *v.* United States, 195 U. S. 27, 24 Sup. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561. That, like the Veazie Bank Case, was the increase of an excise tax upon a subject properly taxable in which the taxpayers claimed that the tax had become invalid because the increase was excessive. It was a tax on oleomargarine, a substitute for butter. The tax on the white oleomargarine was one-quarter of a cent a pound, and on the yellow oleomargine was first 2 cents and was then by the act in question increased to 10 cents per pound. This court held that the discretion of Congress in the exercise of its constitutional powers to levy excise taxes could not be controlled or limited by the courts because the latter might deem the incidence of the tax oppressive or even destructive. It was the same principle as that applied in the Veazie Bank Case. This was that Congress, in selecting its subjects for taxation, might impose the burden where and as it would, and that a motive disclosed in its selection to discourage sale or manufacture of an article by a higher tax than on some other did not invalidate the tax. In neither of these cases did the law objected to show on its face as does the law before us the detailed specifications of a regulation of a state concern and business with a heavy exaction to promote the efficacy of such regulation.

"The third case is that of Flint *v.* Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312. It involved the validity of an excise tax levied on the doing of business by all corporations, joint stock companies, associations organized for profit having a capital stock represented by shares, and insurance companies, and measured the excise by the net income of the corporations. There was not in that case the slightest doubt that the tax was a tax, and a tax for revenue, but it was attacked on the ground that such a tax could be made excessive and thus used by Congress to destroy the existence of state corporations. To this, this court gave the same answer as in the Veazie Bank and McCray Cases. It is not so strong an authority for the government's contention as they are.

"The fourth case is United States *v.* Doremus, 249 U. S. 86, 39 Sup. Ct. 214, 63 L. Ed. 493. That involved the validity of the Narcotic Drug Act (38 Stat. 785 [Comp. St., § 6287q et seq.]), which imposed a special tax on the manufacture, importation and sale or gift of opium or cocoa leaves or their compounds or derivatives. It required every

person subject to the special tax, to register with the collector of internal revenue his name and place of business and forbade him to sell except upon the written order of the person to whom the sale was made on a form prescribed by the Commissioner of Internal Revenue. The vendor was required to keep the order for two years, and the purchaser to keep a duplicate for the same time and all were to be subject to official inspection. Similar requirements were made as to sales upon prescriptions of a physician and as to the dispensing of such drugs directly to a patient by a physician. The validity of a special tax in the nature of an excise tax on the manufacture, importation, and sale of such drugs was, of course, unquestioned. The provisions for subjecting the sale and distribution of the drugs to official supervision and inspection were held to have a reasonable relation to the enforcement of the tax and were therefore held valid.

"The court said that the act could not be declared invalid just because another motive than taxation, not shown on the face of the act, might have contributed to its passage. This case does not militate against the conclusion we have reached in respect to the law now before us. The court, there, made manifest its view that the provisions of the so-called taxing act must be naturally and reasonably adapted to the collection of the tax and not solely to the achievement of some other purpose plainly within state power.

"For the reasons given, we must hold the Child Labor Tax Law invalid."

Workmen's Compensation Act—Injury to Gardener Stopping Runaway Team.—In Sebo *v.* Libby, McNeil & Libby, 185 N. W. 702, the Supreme Court of Michigan held that where one employed as a gardener at his employer's plant was killed in attempting to stop a drayman's team that ran away from a receiving platform while cans of cream delivered in the employer's business were being unloaded, the accident arose out of and in the course of deceased's employment within the Workmen's Compensation Act.

The court said in part: "Mr. Sebo may not have known whether the cream belonged to his employer or not, nor its value. But whether he did or not, and whether the cream was the property of the defendant or not, the delivery of it to the plant was the business of the employer. Mr. Sebo acted in an emergency, upon sudden impulse, to prevent a runaway upon his employer's property, and it may be inferred that the act was to prevent loss to the employer and that it was in furtherance of the employer's business. The finding of the board, therefore, must be sustained.

"It was held by the Court of Session, Scotland, in Devine *v.* Caledonian Railway Company, vol. 1, Fifth Series, 1105 (quoting from syllabus):

"'A case for appeal under the Workmen's Compensation Act, 1897 in an arbitration for compensation on account of the death of A.,